

## **SETTLEMENT AGREEMENT**

This Agreement is made and entered into as of July 11, 2016 (the "Effective Date"), by and between Phase 2, LLC d/b/a Vision Grills ("Vision Grills"), a Missouri corporation having a principal place of business at 1531 Fairview Avenue, Suite B, St. Louis, Missouri 63132 and Salco Inc., d/b/a/ Two Trees Products ("Two Trees Products"). Each of Vision Grills and Two Trees Products shall be referred to as a "Party," and collectively as the "Parties."

### **RECITALS**

**Whereas**, Vision Grills owns the trademarks VISION, VISION GRILLS, VISION GRILLS & Design and BRINGING BACK FLAVOR ("the Vision Grills Marks");

**Whereas**, on April 3, 2015, Vision Grills and Two Trees Products entered into a Trademark License Agreement which, in part, authorized Two Trees Products to use certain Vision Grills Marks for lump charcoal products sold to Sam's Club in the United States and Mexico ("the Trademark License Agreement");

**Whereas**, the Trademark License Agreement expired on April 4, 2016 and was not renewed, modified or amended;

**Whereas**, Vision Grills contends that, since April 4, 2016, Two Trees Products has used the Vision Grills Marks without authorization from Vision Grills. Specifically, Two Trees Products has (i) sold charcoal products branded with the Vision Grills Marks in Europe without authorization or approval from Vision Grills, (ii) ordered approximately 50,000 bags branded with one or more of the Vision Grills Marks, and (iii) caused seven truckloads of those bags filled with charcoal to be shipped to one or more customers in the United States and/or Mexico (collectively, "the Infringing Activity");

**Whereas**, Vision Grills filed a lawsuit against Two Trees Products which is pending in the United States District Court for the Eastern District of Missouri ("the Court"), as case number 4:16-cv-00986, captioned *Phase 2, LLC d/b/a Vision Grills v. Salco, Inc. d/b/a Two Trees Products* ("the Litigation");

**Whereas**, Two Trees Products has used the trademark "BEST OF THE WEST" in connection with lump charcoal products and owns U.S. Trademark Registration Nos. 1,894,785 and 1,921,437 for "BEST OF THE WEST" ("the Best of the West trademark");

**Whereas**, Two Trees Products has an inventory of bags branded with certain Vision Grills Marks and co-branded with the Best of the West trademark. These bags include 21,387 "Vision Oak" bags already paid for by Vision Grills and originally intended for use in connection with sales to Home Depot ("the Home Depot bags"), 124,114 "Vision # 20 Hardwood" bags and 97,775 "Vision #20 Mesquite" bags; and

**Whereas**, Two Trees Products contends Vision Grills owes Two Trees Products \$11,793.60 USD for certain products delivered to Vision Grills by Two Trees Products before the Effective Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Vision Grills' Representations and Warranties.** Vision Grills represents and warrants that it possesses the authority and is within its rights to enter into this Agreement and has not transferred any of the claims that are released in this Agreement.
2. **Two Trees Products' Representations and Warranties.** Two Trees Products represents and warrants that it possesses the authority and is within its rights to enter into this Agreement. Two Trees Products further represents that no other person(s) or entity has ownership rights or other interest in the Best of the West trademark.
3. **Two Trees Products' Obligations.** Two Trees Products will: (i) waive the outstanding balance of \$11,793.60 USD owed by Vision Grills and adjust Vision Grills' outstanding balance owed to Two Trees Products as of the Effective Date to \$0.00 USD; (ii) except for bags purchased by Vision Grills as set forth in Section 4(i) below, cease and desist use of the Vision Grills Marks or any trademark confusingly similar to the Vision Grills Marks throughout the world; (iii) pay Vision Grills the amount of \$20,000.00 USD on or before July 29, 2016; and (iv) when purchased, ship the Home Depot bags, the Vision # 20 Hardwood bags and the Vision #20 Mesquite bags in Two Trees Products' possession as of June 27, 2016 to location(s) to be chosen by Vision Grills within the U.S., Canada or Mexico, at Two Trees Products' expense.
4. **Vision Grills' Obligations.** Vision Grills will: (i) purchase Two Trees Products' remaining inventory of Vision # 20 Hardwood bags and Vision #20 Mesquite bags if and as needed by Vision Grills (and not as a lump sum) at the price of \$.50 USD per bag, and (ii) upon receipt of the payment specified in Section 3(iii), file a motion to dismiss the Litigation in the form shown as Exhibit A.
5. **Trademark Authorization.** Two Trees Products hereby authorizes Vision Grills to resell Two Trees Products' inventory of the Home Depot bags, the Vision # 20 Hardwood bags and the Vision #20 Mesquite bags, which bags are imprinted with the Best of the West trademark. This includes having those bags filled with charcoal, promoting the availability of those filled bags for purchase, selling those bags and delivering those bags to third parties. No other use of the Best of the West trademark by Vision Grills is authorized.
6. **Release of Vision Grills.** Two Trees Products releases, acquits and forever discharges Vision Grills, and Vision Grills' past, present and future officers, directors, employees and agents, from and against any and all claims, demands, liabilities and rights of action of any kind and nature, at law, in equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, which Two Trees Products may have or obtain relating to (a) Vision Grills' claims in the Litigation; (b) the allegations Two Trees Products raised or could have been raised in the Litigation; (c) the conduct of the Litigation; and (d) the conduct of settlement negotiations.
7. **Release of Two Trees Products.** Vision Grills releases, acquits and forever discharges


Two Trees Products, and Two Trees Products' past, present and future officers, directors, employees and agents, from and against any and all claims, demands, liabilities and rights of action of any kind and nature, at law, in equity, or otherwise, known to Vision Grills as of the Effective Date related to the subject of the Litigation.

8. **On-going Jurisdiction.** The Court retains jurisdiction over the subject matter of this Agreement including any actions that arise from the performance/non-performance of this Agreement.
9. **Confidentiality.** Each party agrees that the terms of this Agreement are Confidential and may not be disclosed to any third party without the prior express written consent of the other party, except as a part of the dismissal of the Litigation.
10. **Choice of Law.** The interpretation and application of the provisions of this Agreement shall be governed by the laws of the State of Missouri.
11. **Counterparts.** This Agreement may be executed by the Parties in any number of separate counterparts, and all such counterparts so executed constitute one agreement binding on all of the Parties, notwithstanding that all of the Parties are not signatories to the same counterpart or original.
12. **Entire Agreement.** This Agreement sets forth the entire understanding between Vision Grills and Two Trees Products with respect to the subject matter herein involved, and supersedes and cancels any and all other proposals, communications, agreements, negotiations, and commitments whether oral or in writing, with respect to the subject matter of this Agreement.
13. **Compromise and Settlement.** This Agreement is a compromise and settlement of disputed claims and does not constitute of admission of fault or wrongful conduct by any Party.

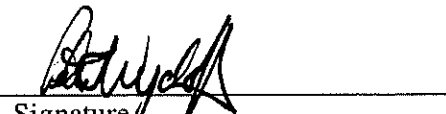
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

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Phase 2, LLC d/b/a Vision Grills

  
Signature  
SCOTT WALTERS  
Printed Name:

Salco Inc., d/b/a Two Trees  
Products

  
Signature  
Peter J. Wyckoff  
Printed Name:

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                                       |   |                        |
|---------------------------------------|---|------------------------|
| PHASE 2, LLC d/b/a VISION GRILLS      | ) |                        |
|                                       | ) | CIVIL ACTION           |
|                                       | ) |                        |
|                                       | ) |                        |
| Plaintiff,                            | ) |                        |
|                                       | ) |                        |
| v.                                    | ) | Case No. 4:16-cv-00986 |
|                                       | ) | JURY TRIAL DEMANDED    |
| SALCO, INC. d/b/a TWO TREES PRODUCTS, | ) |                        |
|                                       | ) |                        |
| Defendant.                            | ) |                        |
| _____                                 | ) |                        |

**MOTION FOR DISMISSAL WITHOUT PREJUDICE**

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff, Phase 2 LLC, d/b/a Vision Grills (“Vision Grills”) requests the Court dismiss this action, *without prejudice*. The parties have reached an agreement to resolve the claims raised in the Complaint as set forth in the settlement agreement attached as Exhibit A. Based on the terms of the settlement agreement, Vision Grills requests the Court issue a dismissal Order expressly incorporating the settlement agreement and retaining jurisdiction over the case, if necessary, for the purposes of enforcing the parties’ settlement agreement. *See* Exhibit A, ¶ 8 (“On-going Jurisdiction. The Court retains jurisdiction over the subject matter of this agreement including any actions that arise from the performance/non-performance of this Agreement.”). A Proposed Order accompanies this Motion. Salco, Inc. d/b/a Two Trees Products has not yet filed an answer or motion for summary judgment.

Dated:

Respectfully submitted,

/s/

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Vision Grills*